

# Michigan Register

Issue No. 4 – 2002 (Published March 15, 2002)



# GRAPHIC IMAGES IN THE MICHIGAN REGISTER

## COVER DRAWING

### *Michigan State Capitol:*

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

## PAGE GRAPHICS

### *Capitol Dome:*

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19<sup>th</sup> century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

### *East Elevation of the Michigan State Capitol:*

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

# Michigan Register

Published pursuant to § 24.208 of  
The Michigan Compiled Laws



Issue No. 4 — 2002

(This issue, published March 15, 2002, contains  
documents filed from February 15, 2002 to March 1, 2002)

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Office of Regulatory Reform

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**John Engler, Governor**



**Dick Posthumus, Lieutenant Governor**

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## PREFACE

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### PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The Office of Regulatory Reform publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

MCL 24.208 states:

Sec. 8 (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

- (a) Executive orders and executive reorganization orders.
  - (b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.
  - (c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.
  - (d) Proposed administrative rules.
  - (e) Notices of public hearings on proposed administrative rules.
  - (f) Administrative rules filed with the secretary of state.
  - (g) Emergency rules filed with the secretary of state.
  - (h) Notice of proposed and adopted agency guidelines.
  - (i) Other official information considered necessary or appropriate by the office of regulatory reform.
  - (j) Attorney general opinions.
  - (k) All of the items listed in section 7(1) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.22217.
- (2) The office of regulatory reform shall publish a cumulative index for the Michigan register.
- (3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.
- (4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.
- (5) An agency shall transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.

MCL 4.1203 states:

Sec. 203. (1) The Michigan register fund is created in the state treasury and shall be administered by the office of regulatory reform. The fund shall be expended only as provided in this section.

- (2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.
- (3) The Michigan register fund shall be used to pay the costs preparing, printing, and distributing the Michigan register.
- (4) The department of management and budget shall sell copies of Michigan register at a price determined by the office of regulatory reform not to exceed cost of preparation, printing, and distribution.
- (5) Notwithstanding section 204, beginning January 1, 2001, the office of regulatory reform shall make the text of the Michigan register available to the public on the internet.
- (6) The information described in subsection (5) that is maintained by the office of regulatory reform shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the office of regulatory reform shall be made available in the shortest feasible time after it is made available to the office of regulatory reform.
- (7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).
- (8) The office of regulatory reform shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).
- (9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

#### **CITATION TO THE MICHIGAN REGISTER**

The *Michigan Register* is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

#### **CLOSING DATES AND PUBLICATION SCHEDULE**

The deadlines for submitting documents to the Office of Regulatory Reform for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The Office of Regulatory Reform is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, Office of Regulatory Reform, Executive Office, George W. Romney Building, 111 S. Capitol Avenue, Lansing, MI 48933

### **RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE**

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

### **SUBSCRIPTIONS AND DISTRIBUTION**

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of \$110.00 per year. Submit subscription requests to: DMB, Office of Administrative Services, P.O. Box 30026, 320 South Walnut Street, Lansing, MI 48909. Checks Payable: State of Michigan. Any questions should be directed to the Office of Regulatory Reform (517) 373-0526.

### **INTERNET ACCESS**

The *Michigan Register* can be viewed free of charge on the Internet web site of the Office of Regulatory Reform: [www.state.mi.us/orr](http://www.state.mi.us/orr)

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the Office of Regulatory Reform Internet web site. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Brian D. Devlin, Director  
Office of Regulatory Reform



## 2002 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
2002		
1	January 15, 2002	February 1, 2002
2	February 1, 2002	February 15, 2002
3	February 15, 2002	March 1, 2002
4	March 1, 2002	March 15, 2002
5	March 15, 2002	April 1, 2002
6	April 1, 2002	April 15, 2002
7	April 15, 2002	May 1, 2002
9	May 1, 2002	May 15, 2002
9	May 15, 2002	June 1, 2002
10	June 1, 2002	June 15, 2002
11	June 15, 2002	July 1, 2002
12	July 1, 2002	July 15, 2002
13	July 15, 2002	August 1, 2002
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19	October 15, 2002	November 1, 2002
20	November 1, 2002	November 15, 2002
21	November 15, 2002	December 1, 2002
22	December 1, 2002	December 15, 2002
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**ADMINISTRATIVE RULES**  
**FILED WITH THE SECRETARY OF STATE**

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*MCL 24.208 states in part:*

*“Sec. 8. (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\*       \*       \*

*(f) Administrative rules filed with the secretary of state.”*

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**ADMINISTRATIVE RULES**

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**ORR # 2001-027**

**DEPARTMENT OF AGRICULTURE**

**AGRICULTURE DEVELOPMENT DIVISION**

**REGULATION NO. 351 JULIAN STILLE VALUE-ADDED AGRICULTURAL DEVELOPMENT  
FUND**

Filed with the Secretary of State on February 25, 2002  
These rules take effect 7 days after filing with the Secretary of State

(By authority conferred on the department of agriculture by section 2 of 2000 PA 322, MCL 285.302)

**PART 1. GENERAL PROVISIONS**

**R 285.351 Definitions.**

Rule 1. (1) As used in these rules:

- (a) “Act” means sections 1 and 2 of 2000 PA322, MCL 285.301 and 285.302.
- (b) “Applicant” means any one of the following entities that does, or applies to do, value-added agricultural processing or related agricultural production operations, or both, in the state of Michigan:
  - (i) An individual.
  - (ii) A farmer-owned cooperative.
  - (iii) A partnership.
  - (iv) A limited liability company.
  - (v) A private or public corporation.
  - (vi) A local unit of government.
  - (vii) A producer-funded commodity organization that is legislatively authorized in Michigan.
- (c) “Application instructions” means the document, which is issued by the department to applicants and which describes information required to participate in the agricultural development fund program in the given state fiscal year.
- (d) “Creditworthiness” means the ability or capacity to borrow money from a nonpublic source.
- (e) “Current ratio” means current assets divided by current liabilities. This will be used as a measure of short-term financial soundness.
- (f) “Department” means the Michigan department of agriculture.
- (g) “Director” means the director of the department or his or her designee.
- (h) “Equity position” means the difference, expressed in percentage terms, between the total value of the assets of the applicant and the total value of the liabilities of the applicant.
- (i) “Expand” means to provide for new facilities or an addition to existing facilities, new products, and services.
- (j) “Feasibility study” means a written study document that consists of an expert analysis of all of the following elements of the proposed venture:
  - (i) Economic feasibility.

- (ii) Market feasibility.
- (iii) Technical feasibility.
- (iv) Financial feasibility.
- (v) Management feasibility.

The meaning and use of these elements shall be the same as those of the United States department of agriculture as defined in the guide for completion of feasibility studies, rural development instruction 4279-B, appendix A, adopted on December 23, 1996. The department shall accept and use a feasibility study that has been approved by the United States department of agriculture. A copy of the guide for completion of feasibility studies is available at no cost from either the Michigan Department of Agriculture, Agriculture Development Division, 525 West Allegan, Lansing, Michigan 48909 or the United States Department of Agriculture, Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, Michigan 48823.

(k) “Financial soundness” means the ability of a business entity to operate profitability or remain sustainable over a reasonable time period.

(l) “Grantee” means any applicant who the director has awarded a grant from the agricultural development fund on the project proposal.

(m) “Job” means a direct employment position with the grantee created or retained as a result of the completion of the project and expressed in terms of a full-time equivalent as defined by the United States department of labor.

(n) “Public notification” means 1 or more press releases sent to appropriate Michigan news media outlets and a public posting on the department’s web site.

(o) “Project” means a venture or an activity, which is funded or proposed to be funded from the agriculture development fund.

(p) “Risk management” means the level at which the applicant minimizes exposure to financial risk.

(2) Any financial terms or definitions shall be consistent with generally accepted accounting principles, unless otherwise defined in these rules.

(3) The terms defined in the act have the same meanings when used in these rules.

### **R 285.352 Application, submittal, selection criteria, scoring, and decision process.**

Rule 2. (1) The department may conduct a grant program using monies from the agricultural development fund pursuant to the purposes and provisions of the act and may utilize up to 5% of the fund for administrative support of grant processing and compliance. The program shall be a competitive grant program and applicants shall make an application for monies from the fund pursuant to the act and these rules.

(2) An application for a grant from the agricultural development fund shall be made on a form or format prescribed by the department for the purpose or purposes described in the act.

(3) Not less than 60 days before the application deadline, as determined by the director, the department shall make a public notification of the grant program, including information on the application form and application instructions. The director may indicate certain priority program initiatives or classes of agricultural commodities and products in the application instructions based upon programmatic or funding changes for each fiscal year.

(4) An application for a grant shall be directed into 1 of the following 4 program categories:

(a) Market research and technical assistance for a specific product prepared by an industry consultant who has expertise in the field.

(b) Detailed business plan development that incorporates a specific marketing strategy that is based upon a written feasibility study and specifically outlines the working capital and financial needs, management structure, construction, production, marketing, and distribution needs.

(c) Application and utilization of innovative technology that will enhance and support the commercialization of value-added products.

(d) Facility purchase and construction, including land, site development, utility improvements, transportation installations, telecommunications, and other infrastructure improvements, demolition, buildings, and equipment. The department may apportion available grant funds in any manner for the 4 program categories in the application instructions.

(5) The department may update the application instructions each fiscal year. The department may also issue amended or subsequent application instructions after the initial application deadline based upon priority program initiatives, programmatic, or funding changes in a given fiscal year.

(6) The application review process will proceed as follows:

(a) Upon receipt of an application, the department shall determine if the application is complete or is lacking necessary information. If the application is found to be complete, the department may forward the application, if appropriate, to the agriculture development review committee. If the application is found to be incomplete, the department shall request additional information and study on all or any portion of an application, by written notification to the applicant setting forth the necessary additional information. Until the necessary information is provided to the department, the department shall neither evaluate nor score the incomplete application for possible approval of grant.

(b) The department's determination to approve, modify, or reject a completed application shall be based on the selection criteria and scoring system as set forth in subrules (9) and (10) of this rule. The director may appoint, on a fiscal year basis, an agricultural development review committee for its review and scoring of the applications and advice on the program. The review committee may divide into subcommittees. The review committee or subcommittees shall evaluate and rank all applications based on the selection criteria and scoring system as set forth in subrules (9) and (10) of this rule. The review committee shall be comprised of parties specified in the act. The parties shall have relevant business, management, or professional expertise. A subcommittee of the review committee that is evaluating and ranking applications based on the selection criteria and scoring system shall be made up of nonapplicants and parties who do not have a conflict of interest. Each complete application shall receive a score and rank from the review committee and from the department together with a recommendation to approve, modify, or reject the application.

(c) The department may modify or reject all or any portion of the application if any 1 of the following situations occurs based upon the recommendations of the review committee:

(i) An applicant fails to submit an application as outlined by the application instructions provided under R 285.353(1) or fails to comply with the requirements prescribed in the act.

(ii) The total estimated revenues available for agricultural development fund projects are exceeded by the sum of all funding that is requested in the applications received for the state fiscal year.

(iii) The department and agricultural development review committee determines that a proposed project requires further justification.

(7) An applicant shall notify the department of a proposed change in an initial or amendatory application for federal funds that would require an increase or decrease of the state financial commitment.

(8) The review and approval process shall be completed within 90 days of the established application deadline.

(9) An application for a grant shall be evaluated according to all of the following selection criteria:

(a) Demonstrated economic and social benefits to in-state producers.

(b) Demonstrated economic and social benefits to communities in Michigan.

(c) Project leader and management team experience and expertise.

(d) Demonstration of a high level of innovation and initiative to benefit producers in Michigan.

(e) Financial soundness, credit-worthiness, and risk assessment.

- (f) Analysis of proposed project in terms of business and market planning.
- (g) For facility grants, completion of a feasibility study, business plan, and financial plan.
- (h) Clear project proposal with specific, measurable outcomes.
- (10) Applications shall be ranked according to the following scoring or point system:
  - (a) A score of 0 to 10 points will be awarded based on economic development resulting from the project that impacts in-state producers of specific commodities involved in the project.
  - (b) A score of 0 to 10 points will be awarded based on assessment of the extent to which the project should lead to improvements or retention within the resident/adjacent community, such as higher wages, improved benefits, more jobs, higher tax base, greater economic activity, and use of higher level of skills not typically found in the community.
  - (c) A score of 0 to 10 points will be awarded based on the level of cash matching funds or other written verification of repayment capacity. In-kind contributions shall not be counted as a cash match.

Point allocation:

Proposed project provides more than a 50% match	10
Project provides a 33-50% match	6
Project provides a 25-33% match	4
Project provides a 10-25% match	2

(Note: if project fails to provide a 10% cash match, it is ineligible for grant award)

- (d) A score of 0 to 25 points will be awarded based on the level of experience, expertise, and proven track record the management team possesses.

Point allocation:

Management team has demonstrated prior successes in relevant field	8
Management team includes other partnering entities that bring proven experience to the project	8
Management team possesses sufficient marketing and finance expertise	9

- (e) A score of 0 to 15 points will be awarded based upon the assessment of the agricultural development review committee of the level of innovation and initiative that the project outlines. The goal is to find projects that are addressing specific value-added niche opportunities in the marketplace, based upon sufficient demand for the innovation. Clear consumer demand shall be demonstrated vs. commodity demand.

Point allocation:

Project targets a specific niche, value-added, or other market segment	5
Project utilizes innovative technology to increase profitability	5
Project has a closer connection to the end consumer rather than just targeting another agricultural commodity market	5

- (f) A score of 0 to 10 points will be awarded for the financial soundness of the project and the minimization of risk.

Point allocation:

Equity position of the applicant is 60% or greater	10
Equity position of the applicant is 50% to 60%	7
Equity position of the applicant is 33% to 50%	5
Equity position of the applicant is less than 33%	2

- (g) A score of 0 to 10 points will be awarded based on the project's clear description of purpose.
- (h) A score of 0 to 10 will be awarded based on a determination of a priority for the agricultural industry based on the director's determination.
- (i) If the grant request is for facility purchase, equipment, and construction category, points will be deducted from the proposal's score if it is determined that the following have not been sufficiently completed:

(i) A detailed marketing plan based on verifiable and useful market research for the product or products has not been completed by a professional market researcher. -20

(ii) A detailed, well-documented and realistic business plan has not been completed. -20

(11) The director of the department shall have final approval of grants made under the act and the department shall provide grants for reimbursement of approved expenses incurred by the grantee which may be divided into partial payments.

**R 285.353 Eligibility and documentation required.**

Rule 3. (1) An applicant for funding shall complete an application containing all of the following:

(a) A clear description of a proposed project or projects stating how the project is designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations in this state.

(b) Documentation that the applicant or its designated business venture has been established according to state law, is in good standing, and is not in default of any federal, state, or local taxes.

(c) Adopted bylaws and articles of incorporation or other articles of organization as appropriate for business structure that indicated the specific duties, functions, and powers of the applicant.

(d) A statement of economic and social benefits to the Michigan producers, the local community, and the state of Michigan.

(e) A detailed proposal for specific use of the funds consistent with program focus and a detailed budget including capital costs, working capital, operating expenses, and revenues.

(f) Measurable outcomes of the project. All jobs that are created or retained shall be clearly a direct result of the project. The number of jobs created or retained shall be evidenced by a written commitment from the business to be assisted or others directly impacted.

(g) Documentation of guaranteed 10% matching funds shall be provided from nonstate cash funds.

(h) Analysis of the proposed project in terms of, and relative to, risk, business and market planning, financial soundness, and creditworthiness.

(i) Trade secrets, commercial, or financial information voluntarily provided to the department shall be provided to the department upon a promise of confidentiality as authorized by the director, and are exempt from disclosure under 1976 PA 442, MCL 15.231 et seq.

(j) Identification of project leaders, management, and marketing team and their expertise and experience in this type of project.

(k) Written support from the local community, suppliers, representatives of the Michigan food and agricultural industry, and others.

(l) Information on previously completed feasibility studies.

(m) An applicant seeking funds for land or property acquisition and assembly, building construction or expansion, demotion, purchase of equipment or related facilities and other improvements shall include a detailed marketing strategy backed by sound market research, a detailed business development plan, and identification of sufficient capital and operating funds prepared by a recognized financial institution which is in good standing in Michigan and which is nationally regulated.

A cash match of not less than 10% of the grant by the applicant or other repayment guarantee with a dedicated funding source such as a certificate of deposit is required before a grant can be awarded.

(3) The director shall authorize department staff and members of the agricultural development review committee to sign and abide by confidentiality statements for trade secrets or commercial or financial information voluntarily provided to the department by applicants upon a promise of confidentiality as authorized by the director, and is exempt from disclosure under 1976 PA 442, MCL 15.231 et seq.



## **PART 2. REPORTING AND COMPLIANCE REQUIREMENTS**

### **R 285.354 Financial reporting and compliance requirements.**

Rule 4. (1) The director of the department may impose fiduciary obligations upon a recipient of a grant, including performance bonding, and may impose conditions upon the receipt and expenditure of the grant money based on the financial stability of the recipient. A contractual grant agreement shall be entered into between the grantee and the department.

(2) A grantee shall provide to the department an annual financial and compliance audit report and management letter within 120 calendar days from the end of the grantee's fiscal year. The report shall include a response certified by an independent, certified public accountant in accordance with the department's and Michigan department of treasury's audit guides. The department may grant an extension of up to 60 days upon receipt of a written request if the department determines the grantee has made a good faith effort to provide the necessary documentation. The grantee shall be required to provide the annual report for 2 years after the completion of the project.

(3) Failure to comply with the audit section of these rules may result in the withholding of agriculture development fund grants for any purpose or other conditions the director may impose upon the receipt and expenditure of grant money as stated in Section 2(6) of the act.

(4) The department may audit a recipient of funds in accordance with the contractual grant agreement entered into by the grantee and the department.

(5) For the duration of any funded project time period, the grantee shall provide semiannual progress reports. A report shall outline all of the following:

- (a) Stated goals that have been accomplished.
- (b) Documentation of all matching funds used.
- (c) Any project modifications that have been made during the funding period.

The report shall be submitted within 6 months of grant award notification and every 6 months thereafter. Based on the nature of the grant, the director has discretion to allow annual reports instead of semiannual reports. Unless otherwise designated by the director, the grantee shall be required to provide the reports for 2 years after completion of the project. The director may waive the 2 year report requirement and may instead request 1 final completion report if the project has been completed and the director determines that the stated goals have been accomplished.

(6) Upon completion of a funded project, a grant recipient shall provide a complete project summary, including performance criteria met and additional pertinent information. A report shall be submitted within 45 days of project completion.

(7) Upon completion of a funded project, a grant recipient shall provide a complete financial summary of the project. An itemized list of expenses and income from the project as well as verification of matching funds is required in the report. The report shall be submitted within 45 days of project completion.

(8) If semiannual reports or annual reports are not provided to the department, then the director, after reasonable notice to the grant recipient, may withhold any remaining portion of the grant until the report has been provided. If the recipient fails to provide the required reports, then the director, in the interest of maintaining the integrity of the grant program, may terminate any remaining portion of the grant award. Grant reimbursement may be required if final summary or financial reports are not provided and the director determines that the stated goals of the grant have not been accomplished or there has not been documentation on how grant funds have been used.

**R 285.355 Procedures for adjusting or withholding funds.**

Rule 5. (1) The department may adjust or withhold project funds that are awarded under the act or may adjust project elements or alter the project scope under any of the following circumstances:

- (a) Matching funds from governmental units or other persons that are necessary for the completion of the project are not awarded to the recipient by the end of the following fiscal year in which the project was approved.
- (b) The actual funds available in the act are below the estimated funds available upon which the grant was approved.
- (c) The actual cost of the project varies from the estimated costs on which a project was approved.
- (d) A recipient fails to comply with the act, these rules, or orders of the director.

(2) The department shall notify a grantee, by certified mail, of a department-initiated action to withhold funds for noncompliance. The notice shall clearly set forth the reasons for the proposed action. The recipient shall have 30 days from the date of issuance of the notice to respond or undertake corrective action. The department may grant an extension if the recipient files a written appeal with the department.

(3) If, within 45 days after the date that the notice of intent to withhold was issued, the recipient has not corrected the reason for the withholding and notified the department of that correction; the recipient has not been granted an extension, or has not appealed the action, in writing, to the department and been granted a waiver, then the department shall send the applicant, by certified mail, a notification that funds are being withheld. Withholding of funds shall occur automatically after the notice of withholding is mailed.

**R 285.356 Contractual agreements.**

Rule 6. A contractual grant agreement between the department and the grantee is required for projects authorized under the act. Based on the financial stability of the recipient, the director of the department may impose fiduciary obligations upon a recipient of a grant within the contract, including performance bonding, and may impose conditions upon the receipt and expenditure of the grant money.

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**ADMINISTRATIVE RULES**

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**ORR # 2002-008**

**DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES**

**DIRECTOR'S OFFICE**

**OCCUPATIONAL HEALTH STANDARDS**

Filed with the Secretary of State on February 27, 2002.  
This rule takes effect 7 days after filing with the Secretary of State

(By authority conferred on the director of the department of consumer and industry services by sections 14 and 24 of 1974 PA 154 and Executive Reorganization Orders Nos. 1996-1 and 1996-2, MCL 408.1014, 408.1024, 330.3101, and 445.2001)

R 325.66201 is added to the Michigan Administrative Code as follows:

**PART 662. MEDICAL SERVICES AND FIRST AID FOR CONSTRUCTION**

**R 325.66201 Rescission of OH rule 6610.**

Rule 1. OH rule 6610, which was incorporated by reference pursuant to section 14 of 1974 PA 154, MCL 408.1014, is rescinded.

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**CERTIFICATE OF NEED  
REVIEW STANDARDS**

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*MCL 24.208 states in part:*

*Sec. 8. The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\* \* \*

*(k) All of the items in section 7(l) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.2217.*

*MCL 24.207 states in part:*

*Sec. 7. "Rule" means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency. Rule does not include any of the following:*

\* \* \*

*(l) All of the following, after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.22217:*

- (i) The designation, deletion, or revision of covered medical equipment and covered clinical services.*
- (ii) Certificate of need review standards*
- (iii) Data reporting requirements and criteria for determining health facility viability.*
- (iv) Standards used by the department of community health in designating a regional certificate of need review agency.*
- (v) The modification of the 100 licensed bed limitation for short-term nursing care programs set forth in section 22210 of the public health code, 1978 PA 368, MCL 333.22210.*

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**CERTIFICATE OF NEED  
REVIEW STANDARDS**

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**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH**

**CERTIFICATE OF NEED REVIEW STANDARDS FOR  
POSITRON EMISSION TOMOGRAPHY (PET) SCANNER SERVICES**

(By authority conferred on the Certificate of Need Commission by Section 22215 of Act No. 368 of the Public Acts of 1978, as amended, and sections 7 and 8 of Act No. 306 of the Public Acts of 1969, as amended, being sections 333.22215, 24.207 and 24.208 of the Michigan Compiled Laws.)

**Section 1. Applicability**

Sec. 1. (1) These standards are requirements for the approval and delivery of services for all projects approved and Certificates of Need issued under Part 222 of the Code that involve PET scanner services.

(2) A PET scanner service is a covered clinical service for purposes of Part 222 of the Code. A PET scanner previously approved pursuant to Section 8 of these standards or recognized by the Department prior to the effective date of these standards as a dedicated research PET scanner and listed in Appendix B, now seeking approval to operate pursuant to sections 3, 4, or 5, shall be considered as a person requesting Certificate of Need approval to initiate or expand, as applicable, a PET scanner service.

(3) The Department shall use sections 3, 4, 5, 6, 7, 8, 10, and 11, as applicable, in applying Section 22225(1) of the Code, being Section 333.22225(1) of the Michigan Compiled Laws.

(4) The Department shall use sections 10 and 11, as applicable, in applying Section 22225(2)(c) of the Code, being Section 333.22225(2)(c) of the Michigan Compiled Laws.

**Section 2. Definitions**

Sec. 2. (1) For purposes of these standards:

(a) "Accelerator" means an apparatus, such as a linear accelerator or cyclotron, for accelerating charged particles to high energies by means of electromagnetic fields.

(b) "Acquisition of an existing PET scanner service" means obtaining possession or control of an existing PET service/unit(s) by contract, ownership, lease, or other comparable arrangement.

(c) "Anatomical site" means the physical area that can be imaged by a single PET scan.

(d) "Arterial sampling" means the insertion of an in-dwelling intra-arterial catheter for the withdrawal of arterial blood as part of a PET procedure.

(e) "Bed position" means the anatomical site being imaged. A change in bed position occurs when a different anatomical site is imaged and the scan requires the physical relocation of the patient relative to the PET scanner.

(f) "Central service coordinator" means the legal entity that has, or will have, operational responsibility for a mobile PET scanner and that is authorized to do business in the state of Michigan and was so authorized on or before the date the letter of intent was received by the Department.

(g) "Code" means Act No. 368 of the Public Acts of 1978, as amended, being Section 333.1101 et seq. of the Michigan Compiled Laws.

(h) "Continuous data acquisition" means the continuous recording of scintigraphic events by a PET scanner for a specified period of time.

- (i) "Cyclotron" means an apparatus for accelerating charged particles to high energies by means of electromagnetic fields.
- (j) "Dedicated research PET scanner" means a PET scanner approved pursuant to Section 8 of these standards or a PET scanner recognized by the Department prior to the effective date of these standards as a dedicated research PET scanner and listed in Appendix B. The Department shall modify Appendix B based on decisions made on Certificates of Need and Certificate of Need applications.
- (k) "Department" means the state agency known as the Michigan Department of Community Health.
- (l) "Department inventory of PET scanners" or "Department Inventory" means the list, maintained by the Department on a continuous basis, of:
  - (i) the PET scanners operating pursuant to a valid Certificate of Need issued under Part 222 or former Part 221;
  - (ii) PET scanners that are not yet operational but have a valid Certificate of Need issued under Part 222 or former Part 221;
  - (iii) proposed PET scanners under appeal from a final Department decision made under former Part 221 or Part 222 or pending a hearing from a proposed decision issued under Part 222 of the Code; and
  - (iv) proposed PET scanners that are part of a completed application under Part 222 of the Code (other than the application or applications in the comparative group under review). The list will not include PET scanners approved pursuant to Section 8 of these standards or PET scanners recognized by the Department as dedicated research PET scanners prior to the effective date of these standards.
- (m) "Dynamic PET scan" means a PET scan that is closely timed to the administration of a radiopharmaceutical in order to capture the perfusion of the tracer.
- (n) "Existing PET scanner service" means the PET service at one geographic location listed on the Department Inventory of PET Scanners.
- (o) "Expand a fixed PET scanner service" means increasing the number of fixed PET scanners at the same geographic location of an existing fixed PET scanner service.
- (p) "Expand a mobile PET scanner service" means the addition of a mobile PET scanner that will be operated by a central service coordinator in the same planning area in which the CSC is approved primarily to operate one or more mobile PET scanners as of the date an application is submitted to the Department.
- (q) "FDGs" means 2-{fluorine-18} fluoro-2-deoxy-D-glucose radiopharmaceuticals.
- (r) "Health service area" or "HSA" means the groups of counties listed in Section 18.
- (s) "Hospital" means a health facility licensed under Part 215 of the Code.
- (t) "Host site" means the geographic address at which a mobile PET scanner is authorized by Certificate of Need to provide PET scanner services.
- (u) "Initiate a mobile PET host site" means the provision of PET services at a host site that has not received any approved mobile PET services within 12 months from the date an application is submitted to the Department. The term does not include the renewal of a lease for the mobile PET service(s).
- (v) "Initiate a PET scanner service" means begin operation of a PET scanner service/scanner, either fixed or mobile, at a geographic location that does not offer (or has not offered within the last consecutive 12-month period) approved PET scanner services and is not listed on the Department Inventory of PET Scanners on the date on which an application is submitted to the Department.
- (w) "Institutional review board" or "IRB" means an institutional review board as defined by Public Law 93-348 which is regulated by Title 45 CFR 46.
- (x) "Medicaid" means the program for medical assistance established under the Social Welfare Act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.119b of the Michigan Compiled Laws.

- (y) "Michigan Inpatient Data Base" or "MIDB" means the data base compiled by the Michigan Health and Hospital Association or successor organization. The data base consists of inpatient discharge records from all Michigan hospitals and Michigan residents discharged from hospitals in border states for a specific calendar year.
- (z) "Mobile PET scanner" means a PET scanner unit and transporting equipment, operated by a central service coordinator, that serves two or more host sites.
- (aa) "Mobile PET scanner network" means the route (i.e., all host sites) the central service coordinator is authorized to serve under Certificate of Need. The mobile PET unit shall operate under a contractual agreement for the provision of PET services on a regularly scheduled basis at each host site.
- (bb) "Out-state Michigan" means health service areas two (2) through eight (8).
- (cc) "Patient visit" means a single session lasting no more than one day utilizing a PET scanner during which 1 or more PET procedures are performed.
- (dd) "Pediatric patient" means, for purposes of these standards, any patient less than 15 years of age.
- (ee) "PET data unit" means the result of the methodology as used in Section 13.
- (ff) "PET equivalent" means the number calculated in accordance with Section 12 for a single patient visit.
- (gg) "PET procedure" means the acquisition of a single image or image sequence involving a single injection of tracer.
- (hh) "PET scan" means one (1) or more PET procedures performed during a single patient visit.
- (ii) "PET scanner" means an FDA-approved full or partial ring scanner or coincidence system that has a crystal at least 5/8-inch thick, techniques to minimize or correct for scatter and/or randoms, and digital detectors and iterative reconstruction. Further, the term does include PET/CT scanner hybrids. If the PET/CT scanner will be used for computed tomography (CT) scans only in conjunction with the PET scan, then no separate CON is required for that CT use. The term does not include single-photon emission computed tomography systems (SPECT), x-ray CT systems, magnetic resonance, ultrasound computed tomographic systems, gamma cameras modified for either non-coincidence or coincidence imaging, or similar technology.
- (jj) "PET scanner services" or "PET services" means either the utilization of a PET unit(s) at one site in the case of a fixed PET service or in the case of a mobile PET service, the utilization of a mobile PET unit at each host site.
- (kk) "Planning area" means the health service area(s), as applicable, and identified in Section 19.
- (ll) "Radionuclide generator" means the source of radioactive material, other than an accelerator or nuclear reactor, used to produce radiopharmaceuticals.
- (mm) "Radiopharmaceutical" means a radioactive pharmaceutical used for diagnostic or therapeutic purposes.
- (nn) "Replace a PET scanner" means an equipment change, other than an upgrade, involving either a PET scanner, an accelerator if located on site, or other equipment related to the operation of the PET scanner service proposed by an applicant that results in that applicant operating the same number of PET scanners before and after project completion.
- (oo) "Rural county" means a county not located in a metropolitan area as that term is defined pursuant to the "Revised Standards for Defining Metropolitan Areas in the 1990's" by the Statistical Policy Office of the Office of Information and Regulatory Affairs of the United States Office of Management and Budget, 55 F.R. p. 12154 (March 30, 1990).
- (pp) "SPECT" means single photon emission computed tomography.
- (qq) "Static PET scan" means any PET scan that is not dynamic.
- (rr) "Tracer" means a radiopharmaceutical developed for use in PET scanner services which allows the quantification and/or qualitative images of chemistry, metabolism, and/or perfusion in vivo.

(ss) "Transmission scan" means transmission computed tomography using a sealed radioactive photon source or x-ray tube photon source applied to the attenuation correction of the emission scan data

(tt) "Upgrade a PET scanner" means an equipment change proposed by an applicant involving either or both the PET scanner and accelerator, if located at the same site, that involves a capital expenditure (whether purchase, lease, donation, or other arrangement) of \$500,000 or more during any period of time of no more than 24 consecutive months.

(2) The definitions in Part 222 shall apply to these standards.

### **Section 3. Requirements for approval for all fixed and mobile host sites**

Sec. 3. (1) An applicant proposing to provide PET scanner services, shall provide, at the time an application is submitted to the Department, the following services:

- (a) nuclear medicine as documented on the certificate issued by the Department of Environmental Quality,
- (b) SPECT as documented on the Annual Hospital Statistical Questionnaire,
- (c) CT scanning,
- (d) magnetic resonance (MR) imaging, and
- (e) cardiac catheterization.

If the applicant does not provide any of the services listed in this subsection at the same geographic location at which the proposed PET scanner will be located, the applicant shall include in the application, on the date it is submitted to the Department, written contracts or agreements with a hospital(s) located within 1) the HSA in which the proposed PET scanner is to be located when that location is within an HSA that includes any rural counties or 2) the HSA and a 20-mile radius of the proposed PET scanner location when that location is within an HSA other than an HSA that includes any rural counties, for the provision of these services. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(2) An applicant shall demonstrate that it provides, at the time the application is submitted to the Department and as documented by submission of the current (updated within the last 12 months) curriculum vitae for each department director, the following medical specialty services:

- (a) open heart surgery,
- (b) thoracic surgery,
- (c) cardiology,
- (d) oncology,
- (e) radiation oncology,
- (f) neurology,
- (g) neurosurgery, and
- (h) psychiatry.

If the applicant does not provide any of the medical specialty services listed in this subsection at the same geographic location at which the proposed PET scanner will be located, the applicant shall include in the application, on the date it is submitted to the Department, written contracts or agreements with a hospital(s) located within 1) the HSA in which the proposed PET scanner is to be located when that location is within an HSA that includes any rural counties or 2) the HSA and a 20-mile radius of the proposed PET scanner location when that location is within an HSA other than an HSA that includes any rural counties, for the provision of these medical specialty services. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.



(3) If a proposed PET scanner service does not involve an on-site source of radiopharmaceuticals, an applicant must provide in the application, on the date it is submitted to the Department, a written contract or agreement that demonstrates that a reliable supply of radiopharmaceuticals will be available to the proposed PET scanner service for the proposed uses. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

**Section 4. Requirements for approval for applicants proposing to initiate a PET scanner service**

Sec. 4. (1) An applicant proposing to initiate a fixed PET scanner service shall project an operating level of at least 2,600 PET data units for each proposed PET scanner based on the methodology used in Section 13.

(2) An applicant proposing to initiate a mobile PET scanner service shall project 2,100 PET data units for each proposed PET scanner based on the methodology used in Section 13.

(a) Of the 2,100 PET data units, the applicant(s) shall project a minimum of 360 PET data units, within the same planning area and a 20-mile radius of the proposed host site, for each proposed PET scanner service site located in a planning area that does not include any rural counties and a minimum of 240 PET data units, within the same planning area as the proposed host site, for each PET scanner service site located in a planning area that includes any rural counties.

(b) The requirements of subsection (2) shall not apply to an applicant that proposes to add a Michigan site as a host site if the applicant, the central service coordinator, demonstrates that the mobile PET scanner service operates predominantly outside of Michigan and that all of the following requirements are met:

(i) The proposed host site will be located in HSA 8.

(ii) The proposed host site in HSA 8 demonstrates a minimum of 240 PET data units based on the methodology in Section 13.

(3) Initiation of a mobile PET host site does not include the provision of mobile PET services at a host site if the applicant, whether the host site or the central service coordinator, demonstrates or provides, as applicable, each of the following:

(a) The host site has received mobile PET services from an existing approved mobile PET unit within the most recent 12-month period as of the date the application is submitted to the Department.

(b) The addition of a host site to a mobile PET unit will not increase the number of PET units operated by the central service coordinator or by any other person.

(c) Notification to the Department of the addition of a host site prior to the provision of PET services by that mobile PET unit in accordance with (d).

(d) A signed certification, on a form provided by the Department, whereby each host site for each mobile PET unit has agreed and assured that it will provide PET services in accordance with the terms for approval set forth in Section 10 of these standards, as applicable. The central service coordinator also shall identify all current host sites and route schedules, on this form, that are served by the mobile route as of the date of the signed certification, or are committed in writing to be served, by the mobile route.

(e) The central service coordinator requires, as a condition of any contract with each host site, compliance with the requirements of these standards by that host site, and the central service coordinator assures compliance, by that host site, as a condition of the Certificate of Need issued to the central service coordinator.

(4) One applicant proposing to initiate a fixed PET scanner in out-state Michigan shall be exempt from Section 4(1) for its first proposed clinical fixed PET scanner if that applicant meets all of the following conditions:

(a) The applicant operates a cyclotron capable of producing radioactive fluorine-18 and proposes to supply FDGs for use by at least four (4) other PET services or proposed services, fixed or mobile, in out-state Michigan. The applicant shall include, in its application, written agreements with at least those four (4) other

PET services or proposed services to fulfill this requirement. The application approval shall be conditional upon the four services having received, or subsequently receiving, CON approval for PET services.

(b) All FDGs provided to other PET services in out-state Michigan, referenced in subdivision (a), shall be provided at the cost of production and distribution. The written agreements required by subdivision (a) shall include specific provisions for resolving any disagreements, between the parties, about the subsequent terms and conditions for assuring that the FDGs will be provided at the cost of production and distribution.

#### **Section 5. Requirements for approval for applicants proposing to expand a PET scanner service**

Sec. 5. An applicant proposing to increase the number of PET scanners (second, third, etc.), whether fixed or mobile, unless otherwise specified, in addition to a PET scanner previously approved for the same applicant, shall demonstrate the following:

(a) All of the applicant's PET scanners, both fixed and mobile, at the same geographic location as the proposed additional PET unit, have performed an average of at least 6,000 PET equivalents per PET scanner during the most recent 12-month period for which the Department has verifiable data.

(b) In the case of a fixed PET scanner service, the additional PET scanner shall be located at the same geographic location as the applicant's existing fixed PET scanner/service. If the scanner will not be located at the same geographic location, the applicant must meet the requirements to initiate or expand a PET scanner service at the proposed location/site, in accordance with Section 4 or Section 5, respectively.

#### **Section 6. Requirements for approval for applicants proposing to replace or upgrade a PET scanner**

Sec. 6. (1) An applicant proposing to replace or upgrade an existing PET scanner(s), whether fixed or mobile, shall demonstrate the volume of PET equivalents performed during the most recent 12-month period for which the Department has verifiable data, meets subdivision (a):

(a) All of the applicant's existing fixed PET scanners, operated at the same geographic location, have performed an average of 4,500 PET equivalents, or all of the applicant's existing mobile PET scanners have performed an average of 3,000 PET equivalents, as applicable.

(b) An exemption to subdivision (a) may be made by the Department, if an applicant demonstrates to the satisfaction of the Department, the following:

(i) The existing PET scanner is technologically incapable of performing the applicable minimum number of PET equivalents. An applicant proposing a replacement under this subsection shall provide documentation, satisfactory to the Department, from a person or an organization with recognized professional expertise regarding that type of equipment, other than the applicant or a representative of a manufacturer or vendor of that type of equipment, indicating the number of PET equivalents the existing equipment is technologically capable of performing. The applicant also shall provide documentation, satisfactory to the Department, that the number of PET equivalents performed during the most recent 12-month period, for which the Department has verifiable data, was the number the equipment is technologically capable of performing.

(2) An applicant proposing to replace a PET scanner(s), whether fixed or mobile, shall demonstrate:

(a) the equipment to be replaced is fully depreciated according to generally accepted accounting principles or

(b) either of the following:

(i) the existing equipment clearly poses a threat to the safety of the public and the applicant's staff as determined by the Department or other qualified agency or individual (physicist, US Department of Energy, applicant's radiation safety committee, etc.) or

(ii) the proposed replacement PET scanner(s) offers technological improvements that enhance quality of care, increase efficiency, and reduce operating costs and patient charges.

(3) In the case of a fixed PET scanner service, the PET scanner will be located at the same geographic location as the applicant's existing fixed PET scanner/service to be replaced/upgraded. If the scanner will not be located at the same geographic location, the applicant must meet the requirements to initiate or expand a PET scanner service at the proposed site, in accordance with Section 4 or Section 5, respectively.

**Section 7. Requirement for approval - applicants proposing to acquire an existing PET scanner service**

Sec. 7. An applicant proposing to acquire an existing PET scanner service, whether fixed or mobile, shall demonstrate that it meets all of the following:

- (a) The project is limited solely to the acquisition of an existing PET scanner/service and does not involve a change in the geographic location of the scanner(s).
- (b) The project will not change the number of PET scanners listed on the Department Inventory of PET Scanners at the geographic location of the PET scanner service being acquired, unless the applicant demonstrates that the project is in compliance with the requirements of Section 3, 4, or 5, as applicable.
- (c) The project will not result in the replacement of the PET scanner(s) at the PET scanner service to be acquired unless the applicant demonstrates that the requirements of Section 6 also have been met.
- (d) All PET scanners to be acquired are listed on the Department Inventory of PET Scanners on the date the application is submitted to the Department.
- (e) The applicant agrees to operate the PET scanner service in accordance with all applicable project delivery requirements set forth in Section 10 of these standards.

**Section 8. Requirements for approval - applicants proposing a dedicated research fixed PET scanner**

Sec. 8. (1) An applicant proposing to operate a fixed PET scanner (whether new or replacement) to be used exclusively for research shall demonstrate each of the following:

- (a) The PET scanner shall operate under a protocol approved by the applicant's Institutional Review Board.
  - (b) The applicant agrees to operate the PET scanner in accordance with the terms of approval in Section 10(1)(a), (b), (c)(vi), (d)(iii), (iv) and (v); 10(2); 10(3); and 10(4).
  - (c) The applicant has an on-site cyclotron.
- (2) An applicant meeting the requirements of subsection (1) shall be exempt from meeting the requirements and terms of sections 3, 4, 5, 6, 7, and 10(1)(c)(i), (ii), (iii), (iv), (v), (d)(i), and (d)(ii) of these standards.

**Section 9. Additional requirements – for mobile PET service(s)/scanner(s)**

Sec. 9. (1) An applicant proposing to begin operation of a mobile PET service/scanner shall demonstrate all of the following:

- (a) A separate Certificate of Need application has been submitted by the central service coordinator and each proposed host site.
  - (b) A proposed regular route schedule, the procedures for handling emergency situations, and copies of all proposed contracts related to the mobile PET service/scanner have been included in the Certificate of Need application at the time it was submitted to the Department. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.
  - (c) The requirements of sections 3, 4, 5, and 6, as applicable, have been met.
- (2) An applicant proposing to become a host site on an existing mobile PET scanner network shall demonstrate that it meets all of the following:

- (a) Approval of the application will not result in an increase in the number of mobile PET scanners listed on the "Department Inventory of PET Scanners" unless the requirements of Section 5 have been met.
- (b) A proposed regular route schedule, the procedures for handling emergency situations, and copies of all proposed contracts related to the mobile PET scanner have been included in the Certificate of Need application at the time it was submitted to the Department. If the required documentation is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

#### **Section 10. Project delivery requirements--terms of approval for all applicants**

Sec. 10. (1) An applicant shall agree that, if approved, the services provided by the PET service shall be delivered in compliance with the following terms of Certificate of Need approval:

- (a) Compliance with these standards.
- (b) Compliance with applicable safety and operating standards.
- (c) Compliance with the following quality assurance standards:
  - (i) The approved PET scanner shall be operating at the applicable required volumes specified in these standards. In meeting this requirement, an applicant shall not include any patient visits conducted by dedicated research PET scanners.
  - (ii) An applicant shall establish and maintain (A) a standing medical staff and governing body (or its equivalent) requirement that provides for the medical and administrative control of the ordering and utilization of PET patient visits and (B) a formal program of utilization review and quality assurance. These responsibilities may be assigned to an existing body of the applicant, as appropriate.
  - (iii) A PET service, whether fixed or mobile, shall be staffed so that screening of requests for PET procedures and/or interpretation of PET procedures will be carried out by a physician(s) with appropriate training and familiarity with the appropriate diagnostic use and interpretation of cross-sectional images of the anatomical region(s) to be examined. For purposes of evaluating this subsection, the Department shall consider it prima facie evidence as to the training of the physician(s) if the physician is board certified or board qualified in nuclear medicine or nuclear radiology. However, an applicant may submit, and the Department may accept, other evidence that the physician(s) is qualified to operate the PET service/scanner. The physician(s) must be on-site or available through telecommunication capabilities to participate in the screening of patients for PET procedures and to provide other consultation services.
  - (iv) An applicant shall establish a PET service team. A PET service team shall be responsible for (A) developing criteria for procedure performance, (B) developing protocols for procedure performance, (C) developing a clinical data base for utilization review and quality assurance purposes, (D) transmitting requested data to the Department, (E) screening of patients to assure appropriate utilization of the PET scanner, (F) taking and interpreting scans, and (G) coordinating PET activity at a PET host site(s) for a mobile pet service(s)/scanner(s).
  - (v) At a minimum, the PET service team shall include the following personnel, employed directly by the applicant or on a contractual basis: (A) a team leader, (B) technologists with training in PET scanning, (C) radiation safety personnel, and (D) a physicist(s). The physicist(s) must be board certified or eligible for certification by the American Board of Radiology or an equivalent organization. Other personnel that may be appropriate members of the PET service team, depending on the type of operation and PET procedures performed, include but are not limited to nurses, computer technicians, radio-chemists, radio-chemistry technicians, radio-pharmacists, and instrument maintenance technicians. If the team leader is not a physician, the PET service team also shall include a physician with appropriate training and familiarity with the appropriate diagnostic use and interpretation of cross-sectional images of the anatomical region(s) to be examined.

(vi) The applicant shall have, within the PET service, equipment and supplies to handle clinical emergencies that might occur within the PET service, with PET staff trained in CPR and other appropriate emergency interventions, and a physician on-site or immediately available to the PET service at all times when patients are undergoing PET procedures.

(d) Compliance with the following requirements:

(i) The applicant shall accept referrals for PET scanner services from all appropriately licensed practitioners.

(ii) The applicant, to assure that the PET scanner services will be utilized by all segments of the Michigan population, shall (A) not deny PET scanner services to any individual based on ability to pay or source of payment, (B) provide PET scanning services to any individual based on the clinical indications of need for the service, and (C) maintain information by payor and non-paying sources to indicate the volume of care from each source provided annually.

Compliance with selective contracting requirements shall not be construed as a violation of this term.

(iii) The applicant shall participate in a data collection network established and administered by the Department or its designee. The data may include, but are not limited to annual budget and cost information, operating schedules, through-put schedules, demographic and diagnostic information, the volume of care provided to patients from all payor sources, and other data requested by the Department or its designee. The applicant shall provide the required data on a separate basis for each separate and distinct site or PET service as required by the Department, in a format established by the Department, and in a mutually agreed upon media. The Department may elect to verify the data through on-site review of appropriate records. If the applicant intends to include research PET equivalents conducted by a PET scanner other than a dedicated research PET scanner in its utilization statistics, the applicant shall submit to the Department a copy of the research protocol with evidence of approval by the Institutional Review Board. The applicant shall submit this at the time the applicant intends to include research procedures in its utilization statistics. The applicant shall separately report to the Department any PET equivalents conducted by a dedicated research PET scanner.

(iv) PET equipment to be replaced shall be removed from service on or before beginning operation of the replacement equipment.

(v) Within 10 days after beginning operation of a PET service/scanner, the applicant shall provide the Department with a notice stating the first date on which the PET service/scanner began operating on a regular basis.

(2) An applicant for a dedicated research PET scanner under Section 8 shall agree that the services provided by the PET scanner approved pursuant to Section 8 shall be delivered in compliance with the following terms of Certificate of Need approval:

(a) The capital and operating costs relating to the dedicated research PET scanner approved pursuant to Section 8 shall be charged only to a specific research account(s) and not to any patient or third-party payor.

(b) The dedicated research PET scanner approved pursuant to Section 8 shall not be used for any purposes other than as approved by the Institutional Review Board unless the applicant has obtained Certificate of Need approval for the PET scanner pursuant to Part 222 and these standards, other than Section 8.

(3) The operation of and referral of patients to the PET service shall be in conformance with 1978 PA 368, Sec. 16221, as amended by 1986 PA 319; MCL 333.16221; MSA 14.15 (16221).

(4) The agreements and assurances required by this section shall be in the form of a certification authorized by the governing body of the applicant or its authorized agent.

#### **Section 11. Project delivery requirements – additional terms of approval for applicants involving mobile PET service(s)/scanner(s)**

Sec. 11. (1) In addition to the provisions of Section 10, an applicant for a mobile PET service(s)/scanner(s) shall agree that the services provided by the mobile PET scanner(s) shall be delivered in compliance with the following terms of Certificate of Need approval:

(a) The central service coordinator for a mobile PET service, with an approved Certificate of Need, shall notify the administrative unit of the Department of Community Health responsible for administering the Certificate of Need program 30 days prior to dropping an existing host site.

(b) Each host site must have at least one physician who is board certified or board eligible in nuclear medicine or nuclear radiology on its medical staff. The physician(s) shall be responsible for (i) establishing patient examination and infusion protocol and (ii) providing for the interpretation of scans performed by the mobile PET service/scanner.

(c) Each mobile PET scanner service shall have an operations committee with members representing each host site, the central service coordinator, and the medical director. This committee shall oversee the effective and efficient use of the PET scanner, establish the regular route schedule, identify the process by which changes are to be made to the schedule, develop procedures for handling emergency situations, and review the ongoing operations of the mobile PET scanner service on at least a quarterly basis.

(d) The central service coordinator shall arrange for emergency repair services to be available 24 hours each day for the mobile PET scanner equipment as well as the vehicle transporting the equipment. In addition, to preserve image quality and minimize PET scanner downtime, calibration checks shall be performed on the PET scanner unit at least once each work day or in accordance with the manufacturer's requirements. Routine maintenance services shall be provided on a regularly scheduled basis, at least once a week or in accordance with the manufacturer's requirements, during hours not normally used for patient procedures.

(e) Each host site shall provide a properly prepared parking pad, for the mobile PET scanner unit, of sufficient load-bearing capacity to support the vehicle, a waiting area for patients, and a means for patients to enter the vehicle without going outside (such as an enclosed canopy or an enclosed corridor). Each host site also must provide the capability for processing the film and maintaining the confidentiality of patient records. A communication system must be provided between the mobile vehicle and each host site to provide for immediate notification of emergency medical situations.

(f) A mobile PET scanner service shall operate under a contractual agreement that includes the provision of PET services at each host site on a regularly scheduled basis.

(g) The volume of utilization at each host site shall be reported to the Department by the central service coordinator under the terms of Section 10(1)(d)(iii).

(h) At least 85 percent of the PET scans provided by the mobile PET scanner/service, annually, must be provided within the single planning area from which 85 percent of the diagnosis specific new cancer case, diagnostic cardiac catheterization, and/or intractable epilepsy data, as referenced in sections 14, 16, and 17, as applicable, was obtained for approval of the mobile PET scanner network.

(2) The agreements and assurances required by this section shall be in the form of a certification authorized by the owner or the governing body of the applicant or its authorized agent.

## **Section 12. Determination of PET equivalents**

Sec. 12. For purposes of these standards, PET equivalents shall be calculated as follows:

(a) Each actual patient visit performed during the time period specified in the applicable section(s) of these standards shall be assigned a number of PET equivalents based on the sum of the applicable values set forth in subsections (i) through (vii).

(i) A single patient visit

1.0

(ii) Number of chemically different tracers

used during a single patient visit.

1 tracers=0

≥2 tracers=0.8

(iii) Number of tracer injections performed during a single patient visit.

1 tracer injection=0

2 tracer injections=0.3

≥3 tracer injections=0.6

(iv) Dynamic scan(s) performed during a single patient visit. 0.5

(v) Number of bed positions used during a single patient visit.

1 bed position=0

≥2 bed positions=0.2 for each additional position

(vi) Arterial sampling performed during a single patient visit. 0.5

(vii) Transmission scan .1 per bed position

Total PET Equivalents for a Single Patient Visit

(b) For each pediatric patient visit, the PET equivalent(s) determined pursuant to subdivision (a) shall be multiplied as follows:

patient ≤ 5 years of age multiply by 2.0

patient >5≤10 years of age multiply by 1.75

patient >10≤15 years of age multiply by 1.5

(c) The PET equivalents for each patient visit determined pursuant to subdivisions (a) and (b) shall be summed to determine the total PET equivalents for the time period specified in the applicable section(s) of these standards.

### Section 13. Methodology for computing the projected number of PET data units

Sec. 13. The applicant being reviewed under Section 4 shall apply the methodology set forth in this section in computing the projected number of PET data units.

(1)(a) Identify the number of diagnosis specific new cancer cases documented in accord with the requirements of Section 14.

(b) Combine the number of cancer cases for lung (site codes C340-C349), esophagus (site codes C150-C159), colorectal (site codes C180-C209), lymphoma (morphology codes 9590-9729), melanoma (morphology codes 8720-8790), and head & neck [site codes C000-C148, C300-C329, C410, C411, C470 OR C490 excluding C440-C444 (skin of head and neck)]. Use the name “combined” for this grouping.

(c) Multiply the number resulting from the calculation in “combined” cancer cases identified in subsection (1)(b) by 0.8, which is the estimated probability that a “combined” cancer case will require a PET scan.

(d) Multiply the number resulting from the calculation in subsection (1)(c) by 2.5, which is the estimated number of PET scans needed for each patient requiring a PET scan.

(2)(a) Identify the number of diagnosis specific new cancer cases documented in accord with the requirements of Section 14.

(b) Multiply the number of breast cancer cases (site codes C500-C509) by 0.25, which is the estimated probability that a breast cancer case will require a PET scan.

- (c) Multiply the number resulting from the calculation in subsection (2)(b) by 1.0, which is the estimated number of PET scans needed for each patient requiring a PET scan.
- (3)(a) Multiply the number of diagnostic cardiac catheterization cases identified in accord with the requirements of Section 16 by 0.1, which is the estimated probability that a patient having a diagnostic cardiac catheterization will require a PET scan.
- (b) Multiply the number resulting from the calculation in subsection (3)(a) by 1.0, which is the estimated number of PET scans needed for each patient requiring a PET scan.
- (4)(a) Multiply the number of intractable epilepsy cases (ICD-9-CM Codes 345.01, 345.11, 345.41, 345.51, 345.61, 345.71, 345.81, OR 345.91) identified in accord with the requirements of Section 17 by 1.0, which is the estimated probability that a patient having an intractable epilepsy procedure will require a PET scan.
- (b) Multiply the number resulting from the calculation in subsection (4)(a) by 1.0, which is the estimated number of PET scans needed for each patient requiring a PET scan.
- (5) Sum the numbers resulting from the calculations in subsections (1) through (4) to determine the total number of projected PET data units.
- (6) Multiply the result calculated in subsection (5) above by a factor of 3.0 if the applicant is proposing to serve only Planning Area 6 to determine the total number of projected PET data units.
- (7) Multiply the result calculated in subsection (5) above by a factor of 2.0 if the applicant is proposing to serve only Planning Area 5 to determine the total number of projected PET data units.

#### **Section 14. Commitment of diagnosis specific new cancer cases**

Sec. 14. (1) An applicant proposing to use diagnosis specific new cancer cases shall demonstrate all of the following:

- (a) Only those cancer diagnoses identified in Section 13(1) and 13(2) shall be included.
- (b) Each entity contributing diagnosis specific new cancer case data provides, as part of the application at the time it is submitted to the Department, a signed governing body resolution that identifies the number of diagnosis specific cancer cases being committed to the application and that states no current or future diagnosis specific new cancer case data will be used in support of any other application for a PET unit for the duration of the PET service for which data are being committed. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.
- (c) For fixed PET scanner services, the geographic location of each entity contributing diagnosis specific new cancer case data is in the same planning area as the proposed PET unit/service.
- (d) For mobile PET scanner services, at least 85 percent of the diagnosis specific new cancer case data is from a single planning area in which 85 percent of the proposed mobile PET service (patient visits) will be provided.
- (e) No entity contributing diagnosis specific new cancer case data is listed on the "Department Inventory of Pet Scanners," nor does it have a pending application to initiate PET scanning service.
- (2) No entity currently operating or approved to operate a unit listed on the "Department Inventory of PET Scanners" shall contribute diagnosis specific new cancer cases to support any PET service/scanner.
- (3) No entity that has contributed any diagnosis specific cancer case data to another PET application for which the approved PET scanner service still is operational shall commit cancer case data to any other application.
- (4)(a) The Department may not consider a withdrawal of diagnosis specific new cancer case data during the 120-day application review cycle following the date on which the Department review of the application commences or after a proposed decision to approve the application has been issued.
- (b) The withdrawal must be submitted to the Department in the form of a governing body resolution that contains the specific certificate of need application number to which the data were originally committed, the legal



applicant entity, the committing entity, the type of data, the date of the meeting in which the governing body authorized the withdrawal of the data, the governing body president's signature, and the date of the signature.

### **Section 15. Documentation of diagnosis specific new cancer case data**

Sec. 15. (1) An applicant required to document volumes of diagnosis specific new cancer cases shall submit, as part of its application at the time it is submitted to the Department, documentation from the Division for Vital Records and Health Statistics verifying the number of diagnosis specific new cancer cases provided in support of the application for the most recent calendar year for which verifiable data are available from the State Registrar. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(2) Diagnosis specific new cancer case data supporting an application under these standards shall be submitted to the Division for Vital Records and Health Statistics using a format and media specified in instructions from the Department of Community Health.

### **Section 16. Commitment and documentation of diagnostic cardiac catheterization data**

Sec. 16. (1) An applicant proposing to use diagnostic cardiac catheterization data shall demonstrate all of the following:

(a) Each entity contributing diagnostic cardiac catheterization data [pursuant to Section 13(3)(a)] provides, as part of the application at the time it is submitted to the Department, a signed governing body resolution that identifies the number of diagnostic cardiac catheterization cases (sessions) committed to the application and that states no current or future diagnostic cardiac catheterization data will be used in support of any other application for a PET unit for the duration of the PET service for which data are being committed. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(b) For fixed PET scanner services, the geographic location of each entity contributing diagnostic cardiac catheterization data is in the same planning area as the proposed PET unit/service.

(c) For mobile PET scanner services, at least 85 percent of the diagnostic cardiac catheterization data is from a single planning area in which 85 percent of the proposed mobile PET service (patient visits) will be provided.

(d) No entity contributing diagnostic cardiac catheterization data is listed on the "Department Inventory of Pet Scanners," nor does it have a pending application to initiate PET scanning service.

(e) The diagnostic cardiac catheterization case data is from the most recently completed report(s) of the "Annual Hospital Statistical Questionnaire" produced by the Department, and the contributing entity has Certificate of Need Approval to provide diagnostic cardiac catheterization services.

(2) No entity currently operating or approved to operate a PET scanner listed on the "Department Inventory of PET Scanners" shall contribute diagnostic cardiac catheterization case data to support any PET service/scanner.

(3) No entity that has contributed any diagnostic cardiac catheterization case data to another PET application for which the approved PET scanner service still is operational shall commit diagnostic cardiac catheterization case data to any other application.

(4)(a) The Department may not consider a withdrawal of diagnostic cardiac catheterization case data during the 120-day application review cycle following the date on which the Department review of the application commences or after a proposed decision to approve the application has been denied.

(b) The withdrawal must be submitted to the Department in the form of a governing body resolution that contains the specific certificate of need application number to which the data were originally committed, the legal

applicant entity, the committing entity, the type of data, the date of the meeting in which the governing body authorized the withdrawal of the data, the governing body president's signature, and the date of the signature.

**Section 17. Commitment and documentation of intractable epilepsy data**

Sec. 17. (1) An applicant proposing to use intractable epilepsy cases shall demonstrate all of the following:

(a) Each entity contributing intractable epilepsy data [pursuant to Section 13(4)(a)] provides, as part of the application at the time it is submitted to the Department, a signed governing body resolution that identifies the number of intractable epilepsy cases committed to the application and that states no current or future intractable epilepsy case data will be used in support of any other application for a PET unit for the duration of the PET service for which the data are being committed. If the required documentation for this subsection is not submitted with the application on the designated application date, the application will be deemed filed on the first applicable designated application date after all required documentation is received by the Department.

(b) For fixed PET scanner services, the geographic location of each entity contributing intractable epilepsy case data is in the same planning area as the proposed PET unit/service.

(c) For mobile PET scanner services, at least 85 percent of the intractable epilepsy data is from a single planning area in which 85 percent of the proposed mobile PET service (patient visits) will be provided.

(d) No entity contributing intractable epilepsy case data is listed on the "Department Inventory of Pet Scanners," nor does it have a pending application to initiate PET scanning service.

(e) The intractable epilepsy case data is from the most recent Michigan Inpatient Data Base (MIDB) available to the Department.

(2) No entity currently operating or approved to operate a unit listed on the "Department Inventory of Pet Scanners" shall contribute intractable epilepsy case data to support any PET service/scanner.

(3) No entity that has contributed any intractable epilepsy case data to another PET application for which the approved PET scanner service still is operational shall commit intractable epilepsy case data to any other application.

(4)(a) The Department may not consider a withdrawal of intractable epilepsy case data during the 120-day application review cycle following the date on which the Department review of the application commences or after a proposed decision to approve the application has been denied.

(b) The withdrawal must be submitted to the Department in the form of a governing body resolution that contains the specific certificate of need application number to which the data were originally committed, the legal applicant entity, the committing entity, the type of data, the date of the meeting in which the governing body authorized the withdrawal of the data, the governing body president's signature, and the date of the signature.

## Section 18. Health Service Areas

Sec. 18. Counties assigned to each health service area are as follows:

HEALTH SERVICE AREA	COUNTIES		
1	Livingston Macomb Wayne	Monroe Oakland	St. Clair Washtenaw
2	Clinton Eaton	Hillsdale Ingham	Jackson Lenawee
3	Barry Berrien Branch	Calhoun Cass Kalamazoo	St. Joseph Van Buren
4	Allegan Ionia Kent Lake	Mason Mecosta Montcalm Muskegon	Newaygo Oceana Osceola Ottawa
5	Genesee	Lapeer	Shiawassee
6	Arenac Bay Clare Gladwin Gratiot	Huron Iosco Isabella Midland Ogemaw	Roscommon Saginaw Sanilac Tuscola
7	Alcona Alpena Antrim Benzie Charlevoix Cheboygan	Crawford Emmet Gd Traverse Kalkaska Leelanau Manistee	Missaukee Montmorency Oscoda Otsego Presque Isle Wexford
8	Alger Baraga Chippewa Delta Dickinson	Gogebic Houghton Iron Keweenaw Luce	Mackinac Marquette Menominee Ontonagon Schoolcraft

## SECTION 19. PLANNING AREAS

Sec. 19. Health service areas assigned to each planning area are as follows:

### PLANNING AREA 1 COUNTIES

HSA 1	Livingston Macomb Wayne	Monroe Oakland	St. Clair Washtenaw
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### PLANNING AREA 2

HSA 2	Clinton Eaton	Hillsdale Ingham	Jackson Lenawee
HSA 3	Barry Berrien Branch	Calhoun Cass Kalamazoo	St. Joseph Van Buren

### PLANNING AREA 3

HSA 4	Allegan Ionia Kent Lake	Mason Mecosta Montcalm Muskegon	Newaygo Oceana Osceola Ottawa
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### PLANNING AREA 4

HSA 5	Genesee	Lapeer	Shiawassee
HSA 6	Arenac Bay Clare Gladwin Gratiot	Huron Iosco Isabella Midland Ogemaw	Roscommon Saginaw Sanilac Tuscola

### PLANNING AREA 5

HSA 7	Alcona Alpena Antrim Benzie Charlevoix Cheboygan	Crawford Emmet Gd Traverse Kalkaska Leelanau Manistee	Missaukee Montmorency Oscoda Otsego Presque Isle Wexford
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### PLANNING AREA 6

HSA 8	Alger Baraga Chippewa Delta Dickinson	Gogebic Houghton Iron Keweenaw Luce	Mackinac Marquette Menominee Ontonagon Schoolcraft
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**Section 20. Department Inventory of PET Scanners**

Sec. 20. Appendix A sets forth the PET scanners listed on the "Department Inventory of PET Scanners" as of the effective date of these standards. Modification to Appendix A shall be made by the Department pursuant to decisions on Certificate of Need applications and Certificates of Need.

**Section 21. Comparative reviews; effect on prior planning policies**

Sec. 21. (1) Proposed projects reviewed under these standards shall not be subject to comparative review except for applicants under Section 4(4) that may be subject to comparative review.

(2)(a) These Certificate of Need review standards supersede and replace the Certificate of Need Standards for Positron Emission Tomography approved by the Certificate of Need Commission on February 2, 1994 and effective March 25, 1994. Further, the requirements of these standards are applicable only to applications submitted to the Department on or after the effective date of these revised standards approved by the CON Commission on December 11, 2001.

(b) The Department shall transfer an applicant's application fee from any PET application that is pending prior to the effective date of these standards to any new application for PET scanner/service from the applicant if the pending PET application is withdrawn so that the applicant may submit a new application under these standards. The new application must be submitted to the Department within six (6) months from the effective date of these standards.

**Section 22. Public Hearing for future revisions to standards**

Sec. 22. The Certificate of Need Commission shall hold a public hearing to consider the formation of an ad hoc advisory committee, on or before March 31, 2004, to review and recommend, at a minimum, changes to Section 4 (initiation) of these standards.

## APPENDIX A

### DEPARTMENT INVENTORY OF PET SCANNERS

<u>PET Facility Location</u>	<u>Number of PET Scanners</u>
William Beaumont Hospital Royal Oak (Oakland)	1
Children's Hospital of Michigan Detroit (Wayne)	1
University of Michigan Hospitals Ann Arbor (Washtenaw)	1

## APPENDIX B

### DEDICATED RESEARCH PET SCANNERS

<u>PET Facility Location</u>	<u>Number of Dedicated Research PET Scanners</u>
University of Michigan Hospitals Ann Arbor (Washtenaw)	1
Mid-Michigan MRI East Lansing (Ingham)	1

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**EXECUTIVE ORDERS  
AND  
EXECUTIVE REORGANIZATION ORDERS**

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*MCL 24.208 states in part:*

*“Sec. 8. (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

*(a) Executive orders and executive reorganization orders.”*

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**EXECUTIVE ORDERS**

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**EXECUTIVE ORDER**

**No. 2002 - 2**

**E-MICHIGAN OFFICE**

**E-MICHIGAN ADVISORY COUNCIL**

**NEW E-MICHIGAN OFFICE**

**NEW E-MICHIGAN ADVISORY COUNCIL**

**EXECUTIVE OFFICE OF THE GOVERNOR**

**DEPARTMENT OF INFORMATION TECHNOLOGY**

**EXECUTIVE REORGANIZATION**

WHEREAS, Article V, Section 1, of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the e-Michigan Office was created to lead all state agencies in electronic government initiatives and policy development, including the development of the award-winning Michigan.gov Internet portal; and

WHEREAS, Michigan.gov is recognized as a national leader among state government Internet service delivery portals; and

WHEREAS, Michigan.gov provides more convenient service to Michigan citizens 24-hours-a-day, seven-days-a-week, through an easy-to-understand web connection to government services and information; and

WHEREAS, it is vitally important that the state continuously build upon e-Michigan's successful advancements in the coordinated delivery of trusted electronic government services; and

WHEREAS, the continued development of electronic government services serves as a catalyst for reengineering the state's current business practices; and



WHEREAS, designing better ways of conducting the business of government yields efficiencies for taxpayers and enhances the quality of life for Michigan's citizens, customers and business partners.

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

## **I. DEFINITIONS**

As used herein:

A. "Department of Information Technology" means the principal department of state government created by Executive Order 2001-3, being Section 18.41 of the Michigan Compiled Laws.

B. "e-Michigan Advisory Council" means the advisory body created within the e-Michigan Office by Executive Order 2000-6.

C. "e-Michigan Office" means the office created within the Executive Office of the Governor as a temporary agency pursuant to Article V, Section 4, of the Constitution of the state of Michigan of 1963, by Executive Order 2000-6.

D. "New e-Michigan Advisory Council" means the advisory body established by this order.

E. "New e-Michigan Office" means the Type I agency established within the Department of Information Technology by this order.

## **II. CREATION OF THE NEW E-MICHIGAN OFFICE**

A. The new e-Michigan Office is hereby created as a Type I agency within the Department of Information Technology. The office shall exercise its prescribed powers, duties and functions independently of the head of the department. All budgeting, procurement and related management functions of the office shall be performed under the direction and supervision of the head of the department.

B. The new e-Michigan Office shall be headed by a Director who shall be appointed by the Governor. The Director shall be a member of the Executive Cabinet and shall regularly attend and fully participate in cabinet meetings and functions.

C. All of the authority, powers, functions, duties and responsibilities of the e-Michigan Office established by Executive Order 2000-6 are transferred to the new e-Michigan Office by Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

### **III. NEW E-MICHIGAN ADVISORY COUNCIL**

A. The new e-Michigan Advisory Council is established as an advisory body within the new e-Michigan Office.

B. The new e-Michigan Advisory Council shall consist of five (5) members. Four (4) of the members shall be appointed by the Governor. The fifth member shall be the Governor, or the Governor's designee, and shall serve as chair of the advisory council.

C. The advisory council shall advise the director of the e-Michigan office on:

1. Best practices for implementation of e-commerce throughout Michigan state government.
2. Future trends in business, government and education relating to the integration of e-commerce in the support of providing services and products in an efficient manner.
3. Best opportunities for the use of e-commerce to offer the type of services desired in order to provide consistent levels of services, develop efficient, effective and secure operations, and attain the highest quality performance.

D. All of the authority, powers, functions, duties and responsibilities of the e-Michigan Advisory Council established by Executive Order 2000-6 are transferred to the new e-Michigan Advisory Council by Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

E. The advisory council may adopt bylaws, consistent with law and this order, to govern its organization and procedure.

F. A majority of the serving members of the advisory council constitutes a quorum for the transaction of business at a meeting, notwithstanding the existence of vacant member positions. Voting upon actions taken by the advisory council shall be conducted by a simple majority vote of the members present at a meeting, whether in person or by use of video-conferencing or tele-conferencing equipment. The advisory council shall meet at the call of the chair and as may be provided in its bylaws. Meetings of the advisory council may be held at any location within the state of Michigan.

### **IV. MISCELLANEOUS**

A. The Director of the new e-Michigan Office shall provide executive direction and supervision for the implementation of the transfers made under this Order. The assigned functions shall be administered under the direction and supervision of the Director of the new e-Michigan Office.

B. The Director of the new e-Michigan Office shall administer the assigned functions transferred by this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

C. The Director of the Department of Information Technology shall immediately initiate coordination with the e-Michigan Office and the e-Michigan Advisory Council to facilitate the transfers and develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the new e-Michigan Office.

D. All records, personnel, property, grants and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available for the activities, power, duties, functions and responsibilities transferred by this Order are hereby transferred to the new e-Michigan Office.

E. The Director of the new e-Michigan Office shall have the full cooperation of state agencies in re-engineering state business processes to allow services to be transacted through the Internet, or by other electronic means.

F. The Director of the new e-Michigan Office shall utilize the staff of other state agencies for advice and assistance to re-engineer business processes, develop specific electronic government objectives, and establish inter-agency and intra-agency data sharing requirements, policies, procedures and standards to guide the development of Michigan.gov services and transactions for customers of the state of Michigan. All executive branch agencies shall cooperate fully with the new e-Michigan Office in the performance of their respective responsibilities.

G. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the year.

H. The Director of the new e-Michigan Office may hire or retain such contractors, sub-contractors, advisors, consultants and agents as the director may deem advisable and necessary, in accordance with relevant procedures, statutes, rules and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of the powers of and performance of the duties of the office and the director.

I. The new e-Michigan Office may accept grants of funds and donations of funds, property, labor or other things of value from any department or office of the state of Michigan and the United States and from any other public or private office or person for the purpose of furthering e-Michigan services.

K. The Director of the new e-Michigan Office may by written instrument delegate a duty or power conferred by law or this Order and the person to whom such duty or power is so delegated may perform such duty or exercise such power at the time and to the extent such duty or power is delegated by the Director of the new e-Michigan Office.

L. All rules, orders, contracts and agreements relating to the functions transferred to the new e-Michigan Office by this Order by the responsible state agency shall continue to be effective until revised, amended or rescinded.

M. Any suit, action or other proceeding lawfully commenced by, against or before any entity effected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

N. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

O. The e-Michigan Office established by Executive Order 2000-6 and the e-Michigan Advisory Council established by Executive Order 2000-6 are hereby abolished.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the state of Michigan of 1963, the provisions of this Executive Order shall become effective sixty (60) days from the filing of this Order.

Given under my hand and the Great Seal of the State of Michigan this \_\_\_\_\_ day of February, in the Year of our Lord, Two Thousand Two.

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GOVERNOR

BY THE GOVERNOR:

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SECRETARY OF STATE

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**ENROLLED SENATE AND HOUSE BILLS  
SIGNED INTO LAW OR VETOED  
(2002 SESSION)**

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*Mich. Const. Art. IV, §33 provides: “Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated.”*

*Mich. Const. Art. IV, §27, further provides: “No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.”*

*MCL 24.208 states in part:*

*“Sec. 8. (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\* \* \*

*(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.*

*(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.”*

**ENROLLED SENATE AND HOUSE BILLS  
SIGNED INTO LAW OR VETOED  
(2002 SESSION)**

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
1		472	Yes	1/21	1/23	01/23/02	<b>STATE;</b> Funds; children's trust fund; revise investment options. ( <b>Sen. S. Johnson</b> )
2	5027		Yes	1/21	1/23	01/23/02	<b>HIGHWAYS;</b> Name; renaming certain portion of M-69; designate as "Oscar G. Johnson Memorial Highway". ( <b>Rep. D. Bovin</b> )
3		430	No	2/6	2/7	**	<b>ENVIRONMENTAL PROTECTION;</b> Other; dark sky preserve; repeal sunset. ( <b>Sen. B. Hammerstrom</b> )
4		471	Yes	2/6	2/7	02/07/02	<b>FINANCIAL INSTITUTIONS;</b> Other; licensing of residential mortgage originator; clarify. ( <b>Sen. B. Leland</b> )
5		615	Yes	2/6	2/7	02/07/02	<b>HIGHWAYS;</b> Name; renaming a certain portion of US-127; establish as the "Gary Priess Memorial Highway." ( <b>Sen. V. Garcia</b> )
6	5436		Yes	2/14	2/14	02/14/02	<b>PROPERTY;</b> Conveyances; transfer of certain state owned properties in Tuscola county and Wayne county; provide for. ( <b>Rep. T. Meyer</b> )
7		682	Yes	2/14	2/14	02/14/02	<b>CHILDREN;</b> Support; citation in divorce law; enact change necessitated by 2001 PA 107. ( <b>Sen. B. Hammerstrom</b> )
8		683	Yes	2/14	2/14	02/14/02	<b>CHILDREN;</b> Support; citation in the family support act; enact changes necessitated by 2001 PA 111. ( <b>Sen. B. Hammerstrom</b> )
9		684	Yes	2/14	2/14	02/14/02	<b>CHILDREN;</b> Support; citation in child custody act; enact change necessitated by 2001 PA 108. ( <b>Sen. B. Hammerstrom</b> )
10		434	Yes	2/14	2/14	02/14/02	<b>CHILDREN;</b> Protection; reporting suspected child abuse or neglect; clarify provisions and add categories of mandated reporters. ( <b>Sen. B. Hammerstrom</b> )

\* - I.E. means Legislature voted to give the Act immediate effect.

\*\* - Act takes effect on the 91<sup>st</sup> day after *sine die* adjournment of the Legislature.

\*\*\* - See Act for applicable effective date.

+ - Line item veto

# - Tie bar

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
11	4195		Yes	2/18	2/19	02/19/02	<b>HEALTH FACILITIES;</b> Nursing homes; individual responsible for receiving complaints and conducting complaint investigations; require nursing home to have such individual available 24 hours per day, 7 days per week. <b>(Rep. B. Patterson)</b>
12	4980		Yes	2/18	2/19	02/19/02	<b>HIGHWAYS;</b> Name; renaming certain portion of I-69; designate as "Purple Heart Highway." <b>(Rep. P. DeWeese)</b>
13	5005		Yes	2/18	2/19	2/19/02	<b>TRANSPORTATION;</b> Other; motor fuels quality; revise standards and penalties. <b>(Rep. L. Julian)</b>
14	5009		Yes	2/18	2/19	2/19/02	<b>CHILDREN;</b> Abuse or neglect; failure to report; increase penalties. <b>(Rep. M. Middaugh)</b>

\* - I.E. means Legislature voted to give the Act immediate effect.

\*\* - Act takes effect on the 91<sup>st</sup> day after *sine die* adjournment of the Legislature.

\*\*\* - See Act for applicable effective date.

+ - Line item veto

# - Tie bar

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**MICHIGAN ADMINISTRATIVE CODE TABLE**  
**(2002 SESSION)**

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*MCL 24.208 states in part:*

*“Sec. 8. (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\*       \*       \*

*(i) Other official information considered necessary or appropriate by the office of regulatory reform.”*

*The following table cites administrative rules promulgated during the year 2000, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).*



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**MICHIGAN ADMINISTRATIVE CODE TABLE**  
**(2002 RULE FILINGS)**

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R Number	Action	2002 MR Issue	R Number	Action	2002 MR Issue	R Number	Action	2002 MR Issue
281.1224	*	3	423.122	A	1	423.174	A	1
285.351	N	4	423.123	A	1	423.175	A	1
285.352	N	4	423.124	A	1	423.176	A	1
285.353	N	4	423.131	A	1	423.177	A	1
285.354	N	4	423.132	A	1	423.178	A	1
285.355	N	4	423.133	A	1	423.179	A	1
285.356	N	4	423.134	A	1	423.181	A	1
325.60151	*	1	423.135	A	1	423.182	A	1
325.66201	A	4	423.136	A	1	423.183	A	1
325.77101	*	1	423.137	A	1	423.184	A	1
338.1555	A	1	423.138	A	1	423.191	A	1
418.101002	*	1	423.141	A	1	423.192	A	1
418.10107	*	1	423.142	A	1	423.193	A	1
418.10115	*	1	423.143	A	1	423.194	A	1
418.10116	*	1	423.144	A	1	423.401	R	1
418.10117	*	1	423.145	A	1	423.403	R	1
418.10202	*	1	423.146	A	1	423.405	R	1
418.10205	*	1	423.147	A	1	423.407	R	1
418.10405	R	1	423.148	A	1	423.411	R	1
418.10406	R	1	423.149	A	1	423.421	R	1
418.10407	R	1	423.149a	A	1	423.422	R	1
418.10411	R	1	423.149b	A	1	423.423	R	1
418.10415	R	1	423.151	A	1	423.431	R	1
418.10501	R	1	423.152	A	1	423.432	R	1
418.10502	R	1	423.153	A	1	423.433	R	1
418.10503	R	1	423.154	A	1	423.434	R	1
418.10901	*	1	423.155	A	1	423.435	R	1
418.10904	*	1	423.156	A	1	423.441	R	1
418.10909	A	1	423.157	A	1	423.442	R	1
418.10912	*	1	423.158	A	1	423.443	R	1
418.10916	*	1	423.161	A	1	423.444	R	1
418.10918	R	1	423.162	A	1	423.445	R	1
418.10923	*	1	423.163	A	1	423.446	R	1
418.101005	A	1	423.164	A	1	423.447	R	1
423.101	A	1	423.165	A	1	423.448	R	1
423.102	A	1	423.166	A	1	423.449	R	1
423.103	A	1	423.167	A	1	423.450	R	1
423.104	A	1	423.171	A	1	423.451	R	1
423.105	A	1	423.172	A	1	423.452	R	1
423.121	A	1	423.173	A	1	423.453	R	1

(\* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

R Number	Action	2002 MR Issue
423.454	R	1
423.455	R	1
423.456	R	1
423.461	R	1
423.462	R	1
423.463	R	1
423.464	R	1
423.465	R	1
423.466	R	1
423.467	R	1
423.468	R	1
423.469	R	1
423.470	R	1
423.471	R	1
423.472	R	1
423.481	R	1
423.482	R	1
423.483	R	1
423.484	R	1

(\* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)



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